Selangor Coconuts Bhd v Pemungut Hasil Tanah, Kedah and other appeals

COURT OF APPEAL (CIVIL APPEAL NOS K-01-30 OF 1994, K-01-31 OF 1994 AND K-01-32 OF 1994
SITI NORMA YAAKOB, ABDUL MALEK AHMAD AND DENIS ONG JJCA
13 APRIL 1999

Land Law *— Acquisition of land — Award — Comparables, reasons for accepting or rejecting*

The case consists of three appeals. In the first and third, the appellant ('Selangor Coconuts') was dissatisfied with the valuation of their lands by the Collector of Land Revenue as well as the award fixed by the High Court at RM11,000 per acre and RM19,484,720 respectively. In the second appeal, it was the Collector that was appealing against the award of RM18,000 per acre fixed by the High Court. Selangor Coconuts also made a cross-appeal, being similarly dissatisfied with the award. In the first appeal, the issue of the applicability of s 214A of the National Land Code 1965 ('the NLC') was raised. In all three appeals, both parties contended that their respective comparables submitted should form the basis of the awards.

Held, dismissing the first and third appeals and allowing the second appeal:

(1) For the first appeal, the comparables submitted by the appellant were not suitable for the following reasons: (i) their valuation report lacked essential details; (ii) they were for small lots whereas the subject lot is a very large estate; (iii) the lapse of time since they were transacted; and (iv) they were lease transactions and not sales. Transaction consideration and assessment values were not reliable indicators of fair market value as shown by the big difference between these in some of the comparables.

Moreover, the scheduled land, being part of an estate, was also subject to the restriction under s 214A of the NLC; *Bertam Consolidated Rubber Co Ltd v Collector of Land Revenue, Province Wellesley* [1984] 1 MLJ 164 followed; *Kumpulan Sua Bentong Sdn Bhd v Ezan Sdn Bhd & Anor* [1993] 2 MLJ 289 distinguished. The appellant also did not explain how the claimed value of RM25,000 per acre was arrived at (see p 436C–438D).

(2) For the second appeal, the purpose of the acquisition was similar to that in the first appeal and the reasoning there would similarly apply here. The award in the first appeal was fixed at RM11,000. There was no reason for the High Court judge to increase the collector's award to RM18,000 (see p 439C–D).

(3) For the third appeal, the appellant's comparables were rejected for the following reasons: (i) the lapse of time since they were transacted; (ii) their land area were small compared to the

scheduled lands; (iii) transaction unapproved by relevant authorities; and (iv) details of the land were not submitted (see pp 440D–441A). A

[**Bahasa Malaysia summary**

Kes ini melibatkan tiga rayuan. Dalam rayuan pertama dan ketiga, perayu ('Selangor Coconut') tidak berpuas hati dengan penilaian tanah mereka oleh Pemungut Hasil Tanah dan juga award yang ditetapkan oleh mahkamah pada RM11,000 seekar dan RM19,484,720 masing-masing. Dalam rayuan kedua, Pemungut telah merayu terhadap award berjumlah RM18,000 seekar yang ditetapkan oleh Mahkamah Tinggi. Selangor Coconuts juga telah membuat rayuan bersilang, kerana tidak puas hati dengan award tersebut. Dalam rayuan pertama, isu pemakaian s 214A Kanun Tanah Negara 1965 ('KTN tersebut') telah dibangkitkan. Dalam ketiga-tiga rayuan, kedua-dua pihak menegaskan bahawa perbandingan masing-masing yang telah diberikan patutlah menjadi dasar award. B C D

Diputuskan, membatalkan rayuan pertama dan ketiga dan membenarkan rayuan kedua:

(1) Bagi rayuan pertama, perbandingan yang diberikan oleh perayu adalah tidak sesuai kerana sebab-sebab berikut: (i) laporan penilaian mereka kekurangan butir-butir; (ii) ia adalah untuk lot-lot kecil sementara lot yang merupakan subjek perkara adalah estet yang besar; (iii) masa telah luput sejak ia dimasuki; dan (iv) ia adalah transaksi pajakan dan bukan penjualan. Balasan transaksi dan nilai taksiran bukanlah petunjuk yang boleh diharapkan untuk menunjukkan harga pasaran yang adil seperti yang ditunjukkan oleh perbezaan besar di dalam beberapa perbandingan. E F

Lebih-lebih lagi, tanah yang telah dijadualkan, yang merupakan sebahagian daripada suatu estet, juga adalah tertakluk kepada sekatan di bawah s 214A KTN; *Bertam Consolidated Rubber Co Ltd v Collector of Land Revenue, Province Wellesley* [1984] 1 MLJ 164 diikut; *Kumpulan Sua Bentong Sdn Bhd v Ezan Sdn Bhd & Anor* [1993] 2 MLJ 289 dibeza. Perayu juga tidak menjelaskan bagaimana jumlah RM25,000 seekar yang dituntut tersebut dikira (lihat ms 436C–438D). G

(2) Untuk rayuan kedua, tujuan pengambilan adalah sama dengan rayuan pertama dan alasan dalam rayuan tersebut adalah terpakai di sini. Award untuk rayuan pertama adalah ditetapkan pada RM11,000. Tiada alasan untuk hakim Mahkamah Tinggi untuk meningkatkan award pemungut kepada RM18,000 (lihat ms 439 C–D) H

(3) Untuk rayuan ketiga, perbandingan perayu adalah ditolak atas alasan-alasan berikut: (i) masa telah luput selepas transaksi dimasuki; (ii) keluasan tanah adalah kecil berbanding dengan I

tanah yang dijadualkan; (iii) traksaksi tersebut tidak diluluskan oleh pihak berkuasa yang berkenaan; dan (iv) butir-butir tanah tersebut tidak diberikan (lihat ms 440D–441A).]

Notes

For cases on award, see 8 *Mallal's Digest* (4th Ed, 1998 Reissue) paras 1176–1208.

Cases referred to

Bertam Consolidated Rubber Co Ltd v Collector of Land Revenue, Province Wellesley [1984] 1 MLJ 164 (folld)

Kumpulan Sua Bentong Sdn Bhd v Ezan Sdn Bhd & Anor [1993] 2 MLJ 289 (distd)

New Serendah Rubber Co Ltd v Collector of Land Revenue, Kuala Lumpur [1981] 2 MLJ 344 (refd)

Ng Tiou Hong v Collector of Land Revenue, Gombak [1984] 2 MLJ 35 (refd)

Siah Brothers Plantation Sdn Bhd v Pentadbiran Tanah dan Daerah Kuantan [1993] 3 MLJ 51 (refd)

Legislation referred to

National Land Code 1965 s 214A, s 214A(4)

Appeal from: Land Reference Nos 15–19 of 1985, 15–18 of 1985 and 15–10 of 1993 (High Court, Alor Setar)

Wong Chong Wah (*Lim Koon Huan* with him) (*Skrine & Co*) for the appellant.

Mohd Zaki Mohd Yasin (State Legal Adviser, Kedah) for the respondent.

Abdul Malek Ahmad J (delivering judgment of the court): We heard these three appeals together and reserved judgment. We now give our reasons. For convenience, we propose to deal with the three appeals separately. It is pertinent to point out that there is a reversal of roles in the second appeal in view of the decision by a High Court judge different from the one in the first and third appeals.

First Appeal: Rayuan Sivil No K-01-30-1994

The scheduled land, acquired on 12 April 1984, has an area of 4.5594 acres and was part of Lot 3291 HS (D) 240/1979 which is 1,532 acres in area. The land is freehold and is categorized under agriculture. Lot 3291 is actually part of Ladang Batu Pekaka with an area of more than 3,000 acres. With an undulating terrain, this large estate is planted with oil palm. Access to the road about 1,000 feet away is through an estate laterite road.

The collector made an award of RM9,000 per acre but the appellant was of the view that it should be RM25,000 per acre. The appellant

produced seven comparables and the respondent nine. Looking at the plan of the whole area, it is quite clear that the respondent's comparables are further from the scheduled land compared to the appellant's comparables. A

The first and fourth comparables of the appellant, for instance, are part of Lot 2710 which learned counsel for the appellant remarked is adjacent to the village of Kuala Ketil just east of Sungei Petani. Although the village is a small town with two rows of shophouses, he stressed, it is a developing area. As for the respondent's comparables, learned counsel for the appellant submitted that apart from being further away, they were parts of large estates and were therefore not appropriate comparables. B

The learned High Court judge held that the nine comparables submitted by the appellant were not suitable, namely because the valuation report was lacking in essential details as there was no information on the parties to the transactions, the category of land use, the restrictions as to dealings, the status of the interest, the accessibility, the available public amenities, the actual terrain and usage, and the location with regard to whether it is part of a local authority area or otherwise (see [1995] 2 MLJ 371). C D

Further, he held that the comparables were small lots of between 0.25 of an acre to 3.3 acres whereas the subject lot is a very large estate citing *Ng Tiou Hong v Collector of Land Revenue, Gombak* [1984] 2 MLJ 35 and *New Serendah Rubber Co Ltd v Collector of Land Revenue, Kuala Lumpur* [1981] 2 MLJ 344 in support. E

He quite appreciated the fact that in the two authorities referred to, the scheduled land comprised the whole subject land, unlike the instant appeal, where the scheduled land is only a bit more than 4 acres. However, the scheduled land could not be valued independently as there was no separate title and could not be valued as a separate parcel unrelated to the remaining portion of the subject lot — see *Bertam Consolidated Rubber Co Ltd v Collector of Land Revenue, Province Wellesley* [1984] 1 MLJ 164. F

For three of the comparables, namely Lots 1790, 62 and 63, there was a big difference between the value of the consideration for the transaction and the value assessed by the Valuation Department for the purpose of stamp duty. The transaction prices were RM30,000, RM40,000 and RM380,000 respectively whereas the assessed values were only RM7,000, RM8,500 and RM17,000 respectively. This, according to the learned High Court judge, indicated that the considerations and values could not be reliable indications of the fair market value. G

The learned High Court judge also commented on the time lapse of the comparable transactions. Only one comparable, that is Lot 70, was transacted in the same year as the scheduled land. The other comparables were in 1976, 1977 and 1978 respectively. Two of the comparables, which are different parts of Lot 2710, were found by the learned High Court judge to be lease transactions and not sales contrary to the requirement enunciated in *Ng Tiou Hong*'s case. H I

Finally, the learned High Court judge, assuming that the comparable lots were not part of an estate as it was not so identified, stated that the

A scheduled land, being part of an estate, is subject to the restriction under s 214A of the National Land Code (see *Bertam*'s case). Learned counsel for the appellant referred to *Kumpulan Sua Betong Sdn Bhd v Ezan Sdn Bhd & Anor* [1993] 2 MLJ 289 which only states that *Bertam*'s case was relevant. In *Kumpulan*'s case, the Supreme Court held that if the owner of an estate intends to sell a portion of an estate land just to one person, then s 214A of
B the National Land Code does not apply to such a transaction. The relevant extract of the Supreme Court judgment states (at pp 296–297):

> ... While we quite appreciate that the object of s 214A is to discourage the fragmentation of estate lands we are reminded that the court's function is to interpret, not to make law. We are also quite aware of the consequence that if
C an estate land is transferred to two or more persons an estate land is fragmented into two or more portions. But we are here dealing with the requirement of an approval of the Estate Land Board. That provision is to be found in sub-s (4) of s 214A which in clear, plain words stipulates that the application for approval is required only where the transfer, conveyance or disposal in any manner whatsoever of the estate land is made to *two or more*
D persons. In other words, where an estate land or only a portion of an estate land is to be transferred to one person, the Estate Land Board's approval is not required. If, therefore, there is any lacuna in the law, it must be corrected through legislative means.

However, the learned High Court judge dealt with the issue in this manner (see [1995] 2 MLJ 371 at p 376):

E

> However, whatever learned counsel's purpose might be in submitting the case, and despite the fact that the decision in *Kumpulan Sua Betong* defines the limitations on the application of s 214A of the National Land Code 1965, one thing remains clear: the restriction on the transfer of estate lands imposed by that provision of the Code still exists, and *Bertam Consolidated*, which is a
F decision of the Federal Court, is still the relevant and binding decision for the present purpose as the facts of that case, like the present case, concerned land acquisition, whereas the facts of *Kumpulan Sua Betong* are not concerned with land acquisition, but with the validity of the transfer of a portion of an estate land.

Apart from finding the appellant's comparables unacceptable, the learned
G High Court judge was of the opinion that the appellant did not explain how the figure of RM25,000 per acre was arrived at.

Turning to the respondent's valuation report, the learned High Court judge accepted the first of two comparables namely the sale of Ladang Tikam Batu in the District of Kuala Muda, an area of 779 acres, on 21 April
H 1983 at RM9,605.42 per acre. The second comparable at Tanjung Pauh Estate in the District of Kubang Pasu, an area of 2147.85 acres, was sold on 16 May 1983 at RM8,279.67 per acre. The learned High Court judge held this was too far away being 75 kilometres from the scheduled land. Further, the first comparable was also the sale of estate land citing *Siah Brothers Plantation Sdn Bhd v Pentadbiran Tanah dan Daerah Kuantan* [1993] 3 MLJ
I 51.

The first comparable was attacked by learned counsel for the appellant for being 25 kilometres away from the subject lot but the learned High

Court judge held otherwise in view of the fact that this was estate land and considering the efficiency of present day transportation. Furthermore, he remarked that there had been a marked absence of recent sales of estate land.

Based on the first comparable, the learned High Court judge explained how he arrived at the figure of RM11,000 per acre. He had rounded up RM9,605.42 to RM10,000 for easy calculation and with an upward adjustment of 10 per cent for the time factor and another 10 per cent for the size of the scheduled land together with a downward adjustment of 10 per cent because the scheduled land did not have a separate title, another RM1,000 was added to the RM10,000 per acre.

Interest was awarded at 8% per annum from the date of possession to the date of payment. As the appellant's claim was viewed by the learned High Court judge to be excessive, no costs were ordered.

We had considered the matter very carefully and are of the view that the learned High Court judge had based his decision on correct principles of law relating to land acquisition. We, therefore, unanimously agree with the learned High Court judge on all points. The appeal is dismissed with costs and the deposit is to go to the respondent to account of the taxed costs.

Second Appeal: Rayuan Sivil No K-01-31-1994

We did not have the benefit of the grounds of judgment in this case and as such will rely on the notes of proceedings in the court below and the submissions of the parties here. At the outset, we had allowed the respondent's notice of motion to cross appeal out of time as there were no objections from the appellant.

The record shows that there had been a number of postponements since 8 January 1991. On 28 September 1993, the parties were asked to submit a brief outline of arguments. Then on 9 November 1994, apart from stating the parties present, there is only the court decision which reads:

> The court award is @ $18,000 per acre as offered to @ $25,000. The $1000 deposit be refunded and cost and interest to be determined late(r) on.

Since this extract appeared hazy, we had asked for a copy of the relevant judgment. The actual order is that the collector's award of RM9,000 per acre has been increased to RM18,000 per acre.

The next entry in the notes of proceedings is dated 9 November 1995, which could well be a typing error, considering the year of the earlier entry where, with the same parties present, the record states:

> By consent it is agreed that the Faedah of 8% be paid on the additional award from the date of possession in Form K ie on 30 April 1995 until the date of full payment.
>
> No order as to costs.
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> F/C confirms the consent judgment.

The submissions of the learned State Legal Adviser for the appellant before us was that the purpose of the acquisition on 30 September 1982 was to

build a school. Since the scheduled land was outside the local council area, the correct valuation would be RM9,000 per acre. He added that different parts of the same estate had been acquired on five occasions over the years the last for 1340 acres at RM22,575 per acre on 30 September 1994. For the last acquisition, the Collector had awarded RM21,500 per acre but the High Court had increased it to RM22,575.

It was the learned State Legal Adviser's contention that the value of the scheduled land in 1982 cannot be the same as in 1994, which is twelve years later, especially since smaller lots fetch higher prices and bigger estates would be subject to constraints including that under s 214A of the National Land Code. He concluded that since the comparables listed by them were estate lots of superior locality, the award in this appeal should be RM9,000 to RM11,000 per acre and not RM18,000 as awarded.

Since this acquisition and the acquisition in the first appeal are for the same school, we were inclined not to change our earlier stand. Further, no written grounds of judgment were made available and we were, therefore, not able to comprehend why the learned High Court judge here had doubled the collector's award. We would allow the appeal with costs and dismiss the cross appeal with no order as to costs and reduce the award to RM11,000 per acre in line with our decision in the first appeal. We also order that the deposit be refunded.

Third Appeal: Rayuan Sivil No K-01-32-1994

According to learned counsel for the appellant, three different titles are involved here namely Lot 860 G 7047, Lot 151 SP 26834 and Lot 152 SP 26835 with areas of 1,595.3521 acres, 1.3717 acres and 1.3679 acres respectively. The acquisition was on 8 February 1990.

He added that the scheduled lands were all in a fast developing area but the comparables of the respondent's valuer were away from the subject property. In fact, the first two comparables were abandoned and the respondent relied only on the others for comparables.

On their part, the appellant had five comparables. The first was a sale at RM20,000 per acre. The second comparable was for another part of the same estate as the first comparable for double the amount per acre. However, both these sales were not approved by the Foreign Investment Committee as the Estate Land Board did not give their consent to the transfer.

The third, fourth and fifth comparables were part of the same estate and were transacted at RM42,150, RM24,000 and RM35,000 per acre respectively.

The learned State Legal Adviser referred to the portions of the judgment by the learned High Court judge as to why the appellant's comparables were rejected and the respondent's comparables accepted.

The award of RM19,484,720 had been based on the respondent's valuation at RM25,000 an acre for the first 100 acres in Zone A, RM18, 000 an acre for the next 300 acres in Zone B, RM12,000 an acre for the next

500 acres in Zone C and RM8,000 an acre for the remaining 698.09 acres in Zone D. A

The appellant is asking for an award of RM35,971,435.50 made up of RM40,000 an acre from the first 200 acres, RM30,000 an acre for the next 300 acres, RM20,000 an acre for the next 500 acres and RM15,000 an acre for the remaining 598 acres apart from RM77,996.50 for the buildings existing thereon. B

The scheduled lands are part of the Bukit Mertajam Estate held under 94 titles with a total area of 9,633.39 acres and divided into four areas namely the Sera Division with 2,461.41 acres, the Kelang Baru Division with 3,156.77 acres, the Batu Putih Division with 2,706.29 acres and the Sungai Kob Division with 923.18 acres. However, the acquired lots are part of the Sera and Kelang Baru Divisions which are planted with rubber and oil palm. To the west and south are industrial and residential areas while to the east and north are agriculture lands with rubber and oil palm. Electricity and water supply and telephone lines are available here. C

The learned High Court judge rejected the first of the appellant's four comparables, namely Lot 754, now Lot 855, because the transaction at RM20,000 per acre was 11 years earlier. Further, the comparable is only 65.240 acre in area while the scheduled lands have an area of 1,598 acres. D

The second comparable was for the sale of part of Lot 860, now Lot 735, for an area of 100 acres at RM40,000 per acre. But the transaction never got off the ground as the conditions upon which the transaction was subject to were never met as there was no approval from the Foreign Investment Committee, Estate Land Board and for the subdivision and issue of separate documents of title. The learned High Court judge also held that the transaction was eight years earlier than the acquisition of the scheduled lands here. E F

The third comparable which is Lot 202 Mukim Padang China, Daerah Kulim of 28.47 acres changed hands on 21 October 1989 at RM42,150 per acre. The learned High Court judge rejected it because of the difference in size and also because it was not estate land and not subject to the approval of the Estate Land Board. Further, no details were furnished as to the state of the land, the location, the status of the title and the parties to the transaction. G

As for the fourth comparable at Lot 735 (part) Mukim Padang China, Daerah Kulim, it was rejected because no details of the nature of the land were given at the time of acquisition. Also, the sizes were different as the said comparable was only 19.637 acres in area. Further, the acquisition was about ten years earlier on 10 September 1981 with the intervening market recession between 1985 and 1988. H

The learned High Court judge was also not happy with the reasoning of the appellant's valuer, as compared to the respondent's valuer, as to the different values per acre based on the zoning of the areas. Consequently, he was at a loss to understand why the appellant had been unhappy with the collector's award. He had accordingly dismissed the appellant's claim. I

A We had dutifully deliberated on the matter and can find no reason to interfere with the finding of the learned High Court judge. We, therefore, dismiss the appeal with costs and order that the deposit is to go to the respondent to account of their taxed costs.

First and third appeals dismissed with costs. Second appeal allowed.

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Reported by Joel Ng

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